86-374

Supreme Court, U.S.
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NO.

in the Supreme Court of the United States

OCTOBER TERM, 1986

THE STATE OF FLORIDA,
Petitioner,

vs.

JOEL ADOLPH SCOTT,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

BRIEF FOR THE RESPONDENT IN OPPOSITION

OF COUNSEL:

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10/92

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CONSTITUTIONAL PROVISIONS

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV §1

REASONS NOT TO REVIEW ON WRIT OF CERTIORARI

I.

THE DECISION BELOW IS IN ACCORD WITH THE COURT'S HOLDING THAT ONE WHO IS ARRESTED WITHOUT PROBABLE CAUSE MAY SUPPRESS ITEMS SEIZED AS A DIRECT RESULT OF THE VIOLATION OF HIS RIGHTS GUARANTEED BY THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Court has long held that items discovered by the police as a direct consequence of an arrest effectuated without probable cause must be suppressed.

In *Whiteley v. Warden, Wyoming State Penitentiary*, 401 U.S. 560 (1971), the Court concluded that the petitioner Whiteley, the driver of an automobile, was arrested without probable cause. After the arrest, the vehicle was searched, and incriminating items were found in the interior and the trunk. The Court ruled that the petitioner's rights under the Fourth and Fourteenth Amendments to the United States Constitution were violated, and held the evidence seized from the vehicle should have been excluded from his trial. *Whiteley*, 401 U.S. at 569.

The Court applied principles established in *Mapp v. Ohio*, 367 U.S. 643 (1961), *Wong Sun v. United States*, 371 U.S.471 (1962), *Chimel v. California*, 395 U.S. 752 (1969), and their progeny in deciding *Whiteley*.

By affirming the trial court's decision to suppress evidence seized as a consequence of the respondent's unlawful arrest, the Third District Court of Appeal and the Florida Supreme Court wholly embraced the analysis the Court used in each instance it considered the issue of whether items seized incident to an unlawful arrest should be suppressed.

The petitioner's argument that the Florida courts' decisions run counter to the Court's holdings in *Rakas v. Illinois*, 439 U.S. 128 (1978) and *Rawlings v. Kentucky*, 448 U.S. 98 (1980) should be rejected. The petitioners in *Rakas* did not contest the legality of their arrest. Indeed, the Court was "not . . . concerned with the issue of probable cause" in *Rakas*. *Rakas*, 439 U.S. at 130 (1978). The Illinois court "did not determine whether there was probable cause for the search and seizure" to which the petitioners in *Rakas* were subjected. *Rakas*, 439 U.S. at 131. Contrastingly, the Florida courts determined there was no probable cause to arrest the respondent. *Florida v. Scott*, 481 So.2d (3d Dist. Ct. App. 1985), *cert. denied*. Accordingly, he was the victim of an illegal seizure, and "had his own Fourth Amendment rights infringed by the . . . seizure" which he successfully challenged. *Rakas*, 439 U.S. at 132,133 (1978). He was therefore entitled to the benefits of the exclusionary rule's protection which were given him by the courts below and defined by the Court in *Rakas*. *Rakas*, 439 U.S. at 134 (1978). The Florida courts' decisions are consonant with, and not in conflict with the Court's ruling in *Rakas*.

No conflict exists with *Rawlings v. Kentucky*, 448 U.S. 98 (1980).

In *Rawlings*, the statements the petitioners sought to suppress were not the product of an illegal detention. *Rawlings*, 448 U.S. at 110 (1980). In *State v. Scott*, 481 So. 2d 40 (3d Dist. Ct. App. 1985) *cert. denied*, No. 68,403 (Fla. June 27, 1986), the evidence which the respondent successfully suppressed was a direct product of his illegal arrest.

Again, the conclusions reached by the Florida courts are in harmony with the analysis and holdings of the Court. Therefore, no basis exists to exercise certiorari jurisdiction.

II.

ABSENT AN ABUSE OF DISCRETION, THE COURT MUST GIVE DEFERENCE TO THE FINDINGS OF THE TRIAL COURT.

The findings of a trial court must "remain undisturbed except for most extraordinary circumstances", *United States v. Johnson*, 327 U.S. 106,111 (1946) and must be given deference by a reviewing court unless the record reveals the trial court abused its discretion in making these findings. *Shotwell Manufacturing Company v. United States*, 371 U.S. 341,355 (1962). The trial court which presided over the respondent's motion to suppress made the following findings:

1. The testimony of the police officers was confused and overall, was not credible.

2. No testimony indicated the respondent was engaged in criminal activity or activity that could be labelled suspicious.

3. The police officers' tip from the confidential informant was not credible.

4. The stop of the respondent's vehicle was based not upon probable cause or reasonable suspicion, but upon a mere hunch.

The findings were made after the court heard the half truths, misrepresentations, and ambiguous testimony orchestrated by the police and presented by the prosecutor in this matter.

The record supports the trial court's findings and these findings should not be disturbed by the Court

CONCLUSION

Respondent respectfully submits that the Petition for a Writ of Certorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Calvin L. Fox, Assistant Attorney General, 401 N.W. 2nd Avenue, Miami, Florida, 33128 and Joseph S. Rosenbaum, Assistant State Attorney, 1351 N.W. 12th Street, Miami, Florida 33125.

H. T. SMITH